
UNIFORM UNCLAIMED PROPERTY ACT

State Treasurer
of WEST VIRGINIA

A Message From State Treasurer John Perdue

As Treasurer, part of my responsibilities is to be the legal custodian of property that has become unclaimed for various reasons.

During the 1997 legislative session, I was successful in having the State Code updated, enabling West Virginia to become the first state in the nation to enact the Uniform Unclaimed Property Act.

As a potential holder of unclaimed property, the changes in the state law will be of interest to you. The code changes became effective July 1, 1997.

This new act allows the State Treasurer to enter into agreements with other states to allow property that belongs to our citizens to be transferred to West Virginia.

Numerous other changes in the State Code occurred with the new act. These include the way in which reports are filed, the periods constituting abandonment, the ways in which the unclaimed property can be advertised, and the way



John D. Perdue
West Virginia State Treasurer

some property can be disposed of by government agencies.

Law Enforcement agencies can now dispose of stolen property by donating most of it, except firearms and ammunition, to charitable organizations.

My office is committed to returning the unclaimed property to the rightful owners. This copy of the State Code is being published on this site to help answer questions you may have about provisions of the Unclaimed Property Chapters.

Table of Contents

CHAPTER 34. ESTRAYS, DRIFT AND DERELICT PROPERTY

ARTICLE 2. DERELICT PROPERTY

§34-2-3. Decree of title to state

CHAPTER 36. ESTATES AND PROPERTY

ARTICLE. 8. UNIFORM UNCLAIMED PROPERTY ACT

§36-8-1. Definitions

§36-8-2. Presumptions of abandonment

§36-8-3. Contents of safe deposit box or other safekeeping depository

§36-8-4. Rules for taking custody

§36-8-5. Dormancy charge

§36-8-6. Burden of proof as to property evidenced by record of check or draft

§36-8-7. Report of abandoned property

§36-8-8. Payment or delivery of abandoned property

§36-8-9. Notice and publication of lists of abandoned property

§36-8-10. Custody by state; recovery by holder; defense of holder

§36-8-11. Crediting of dividends, interest and increments to owner's account

§36-8-12. Public sale of abandoned property

§36-8-13. Deposit of funds

§36-8-14. Claim of Other state to recover property

§36-8-15. Filing claim with administrator; handling of claims by administrator

§36-8-16. Action to establish claim

§36-8-17. Election to take payment or delivery

§36-8-18. Destruction or disposition of property having no substantial commercial value; immunity from liability

§36-8-19. Periods of limitation

§36-8-20. Requests for reports and examination of records

§36-8-21. Retention of records

§36-8-22. Enforcement

§36-8-23. Interstate agreements and cooperation; joint and reciprocal actions with other states

§36-8-24. Interest and penalties

§36-8-25. Records of abandoned property

§36-8-26. Foreign transactions

§36-8-27. Transitional provisions

§36-8-28. Rules

§36-8-29. Uniformity of application and const

§36-8-30. Short title

§36-8-31. Severability clause

§36-8-32. Effective date

ARTICLE 8A. UNCLAIMED STOLEN PROPERTY HELD BY LAW-ENFORCEMENT AGENCIES

§36-8A-1. Definitions

§36-8A-2. Unclaimed stolen property reports

§36-8A-3. Treasurer's response to unclaimed stolen property report

§36-8A-4. Disposition of unclaimed stolen property other than firearms and ammunition

§36-8A-5. Trade-in or appropriation of unclaimed stolen firearms and ammunition

§36-8A-6. Deposit of funds

§36-8A-7. Immunity of law-enforcement agencies

CHAPTER 42. DESCENT AND DISTRIBUTION

ARTICLE 1. DESCENT

§42-1-3c. No taker

Effective Date

CHAPTER 34. ESTRAYS, DRIFT AND DERELICT PROPERTY.

ARTICLE 2. DERELICT PROPERTY.

§34-2-3. Decree of title to state.

If, in such a suit as is mentioned in section one of this article, no person appears to show title in himself, the court shall decree the residuum or other property to the state, and enforce the collection thereof, or of the proceeds of the sale of such property. Any real property so decreed to the state shall be remitted to the state auditor. Any personal property shall be remitted to the state treasurer for disposition by public sale in accordance with the provisions of section twelve, article eight, chapter thirty-six of this code. The proceeds of the sale of any such real property shall be deposited to the credit of the general school fund. The proceeds of the sale of any such personal property shall be deposited to the credit of the general fund.

CHAPTER 36. ESTATES AND PROPERTY.

ARTICLE. 8. UNIFORM UNCLAIMED PROPERTY ACT

§36-8-1. Definitions.

As used in this article:

(1) "Administrator" means the state treasurer.

(2) "Apparent owner" means a person whose name appears on the records of a holder as the person entitled to property held, issued or owing by the holder.

(3) "Business association" means a corporation, joint stock company, investment company, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, safe deposit company, financial organization, insurance company, mutual fund, utility or other business entity consisting of one or more persons, whether or not for profit.

(4) "Domicile" means the state of incorporation of a corporation and the state of the principal place of business of a holder other than a corporation.

(5) "Financial organization" means a savings and loan association, bank, banking organization or credit union.

(6) "Holder" means a person obligated to hold for the account of, or deliver or pay to, the owner property that is subject to this article.

(7) "Insurance company" means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, engaged in the business of providing life endowments, annuities or insurance, including accident, burial, casualty, credit life, contract performance, dental, disability, fidelity, fire, health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection and workers' compensation insurance.

(8) “Mineral” means gas; oil; coal; other gaseous, liquid and solid hydrocarbons; oil shale; cement material; sand and gravel; road material; building stone; chemical raw material; gemstone; fissionable and nonfissionable ores; colloidal and other clay; steam and other geothermal resource; or any other substance defined as a mineral by the law of this state.

(9) “Mineral proceeds” means amounts payable for the extraction, production or sale of minerals, or, upon the abandonment of those payments, all payments that become payable thereafter. The term includes amounts payable:

(i) For the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory royalties, shut-in royalties, minimum royalties and delay rentals;

(ii) For the extraction, production or sale of minerals, including net revenue interests, royalties, overriding royalties, extraction payments and production payments; and

(iii) Under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement and farm- out agreement.

(10) “Money order” includes an express money order and a personal money order, on which the remitter is the purchaser. The term does not include a bank money order or any other instrument sold by a financial organization if the seller has obtained the name and address of the payee.

(11) “Owner” means a person who has a legal or equitable interest in property subject to this article or the person’s legal representative. The term includes a depositor in the case of a deposit, a beneficiary in the case of a trust other than a deposit in trust, and a creditor, claimant or payee in the case of other property.

(12) “Person” means an individual, business association, financial organization, estate, trust, government, governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(13) “Property” means tangible personal property described in section three of this article or a fixed and certain interest in intangible personal property that is held, issued or owed in the course of a holder’s business, or by a government, governmental subdivision, agency or instrumentality, and all income or increments therefrom. The term includes property that is referred to as or evidenced by:

(i) Money, a check, draft, warrant for payment issued by the state of West Virginia, deposit, interest or dividend;

(ii) Credit balance, customer’s overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds or unidentified remittance;

(iii) Stock or other evidence of ownership of an interest in a business association or financial organization;

(iv) A bond, debenture, note or other evidence of indebtedness;

(v) Money deposited to redeem stocks, bonds, coupons or other securities or to make distributions;

(vi) An amount due and payable under the terms of an annuity or insurance policy, including policies providing life insurance, property and casualty insurance, workers' compensation insurance, or health and disability insurance; and

(vii) An amount distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance or similar benefits.

(14) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(15) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico or any territory or insular possession subject to the jurisdiction of the United States.

(16) "Utility" means a person who owns or operates for public use any plant, equipment, real property, franchise or license for the transmission of communications or the production, storage, transmission, sale, delivery or furnishing of electricity, water, steam or gas as defined in section two, article one, chapter twenty-four of this code.

§36-8-2. Presumptions of abandonment.

(a) Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

(1) Traveler's check, fifteen years after issuance;

(2) Money order, seven years after issuance;

(3) Stock or other equity interest in a business association or financial organization, including a security entitlement under article eight of the uniform commercial code, five years after the earlier of: (i) The date of the most recent dividend, stock split or other distribution unclaimed by the apparent owner; or (ii) the date of the second mailing of a statement of account or other notification or communication that was returned as undeliverable or after the holder discontinued mailings, notifications or communications to the apparent owner;

(4) Debt of a business association or financial organization, other than a bearer bond or an original issue discount bond, five years after the date of the most recent interest payment unclaimed by the apparent owner;

(5) A noninterest bearing demand, savings or time deposit, including a deposit that is automatically renewable, five years after the earlier of maturity or the date of the last indication by the owner of interest in the property; an interest bearing demand, savings or time deposit including a deposit that is automatically renewable, seven years after the earlier of maturity or the date of the last indication by the owner of interest in the property. A deposit that is automatically renewable is deemed matured for purposes of this section

upon its initial date of maturity, unless the owner has consented to a renewal at or about the time of the renewal and the consent is in writing or is evidenced by a memorandum or other record on file with the holder;

(6) Money or credits owed to a customer as a result of a retail business transaction, three years after the obligation accrued;

(7) Gift certificate, three years after the thirty-first day of December of the year in which the certificate was sold, but if redeemable in merchandise only, the amount abandoned is deemed to be sixty percent of the certificate's face value;

(8) Amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, three years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, three years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based;

(9) Property distributable by a business association or financial organization in a course of dissolution, one year after the property becomes distributable;

(10) Property received by a court as proceeds of a class action, and not distributed pursuant to the judgment, one year after the distribution date;

(11) Property held by a court, government, governmental subdivision, agency or instrumentality, one year after the property becomes distributable;

(12) Wages or other compensation for personal services, one year after the compensation becomes payable;

(13) Deposit or refund owed to a subscriber by a utility, two years after the deposit or refund becomes payable;

(14) Property in an individual retirement account, defined benefit plan or other account or plan that is qualified for tax deferral under the income tax laws of the United States, three years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty;

(15) Warrants for payment issued by the state of West Virginia which have not been presented for payment, within six months of the date of issuance;

(16) All funds held by a fiduciary, including the state municipal bond commission, for the payment of a note, bond, debenture or other evidence of indebtedness, five years after the principal maturity date, or if such note, bond, debenture or evidence of indebtedness is called for redemption on an earlier date, then the redemption date, such premium or redemption date to also be applicable to all interest and premium, if any, attributable to such note, bond, debenture or other evidence of indebtedness;

(17) All other property, five years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs.

(b) At the time that an interest is presumed abandoned under subsection (a) of this section, any other property right accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned, is also presumed abandoned.

(c) Property is unclaimed if, for the applicable period set forth in subsection (a) of this section, the apparent owner has not communicated in writing or by other means reflected in a contemporaneous record prepared by or on behalf of the holder, with the holder concerning the property or the account in which the property is held, and has not otherwise indicated an interest in the property. A communication with an owner by a person other than the holder or its representative who has not in writing identified the property to the owner is not an indication of interest in the property by the owner.

(d) An indication of an owner's interest in property includes:

(i) The presentment of a check or other instrument of payment of a dividend or other distribution made with respect to an account or underlying stock or other interest in a business association or financial organization or, in the case of a distribution made by electronic or similar means, evidence that the distribution has been received;

(ii) Owner-directed activity in the account in which the property is held, including a direction by the owner to increase, decrease or change the amount or type of property held in the account;

(iii) The making of a deposit to or withdrawal from a bank account; and

(iv) The payment of a premium with respect to a property interest in an insurance policy; but the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions.

(e) Property is payable or distributable for purposes of this article notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment.

§36-8-3. Contents of safe deposit box or other safekeeping depository.

Tangible personal property held in a safe deposit box or other safekeeping depository in this state in the ordinary course of the holder's business and proceeds resulting from the sale of the property permitted by other law, are presumed abandoned if the property remains unclaimed by the owner for more than five years after expiration of the lease or rental period on the box or other depository.

§36-8-4. Rules for taking custody.

Except as otherwise provided in this article or by other statute of this state, property that is presumed abandoned, whether located in this or another state, is subject to the custody of this state if

(1) The last known address of the apparent owner, as shown on the records of the holder, is in this state;

(2) The records of the holder do not reflect the identity of the person entitled to the property and it is established that the last known address of the person entitled to the property is in this state;

(3) The records of the holder do not reflect the last known address of the apparent owner and it is established that:

(i) The last known address of the person entitled to the property is in this state; or

(ii) The holder is domiciled in this state or is a government or governmental subdivision, agency or instrumentality of this state and has not previously paid or delivered the property to the state of the last known address of the apparent owner or other person entitled to the property;

(4) The last known address of the apparent owner, as shown on the records of the holder, is in a state that does not provide for the escheat or custodial taking of the property and the holder is domiciled in this state or is a government or governmental subdivision, agency or instrumentality of this state;

(5) The last known address of the apparent owner, as shown on the records of the holder, is in a foreign country and the holder is domiciled in this state or is a government or governmental subdivision, agency or instrumentality of this state;

(6) The transaction out of which the property arose occurred in this state, the holder is domiciled in a state that does not provide for the escheat or custodial taking of the property, and the last known address of the apparent owner or other person entitled to the property is unknown or is in a state that does not provide for the escheat or custodial taking of the property; or

(7) The property is a traveler's check or money order purchased in this state, or the issuer of the traveler's check or money order has its principal place of business in this state and the issuer's records show that the instrument was purchased in a state that does not provide for the escheat or custodial taking of the property, or do not show the state in which the instrument was purchased,

§36-8-5. Dormancy charge.

A holder may deduct from property presumed abandoned a charge imposed by reason of the owner's failure to claim the property within a specified time only if there is a valid and enforceable written contract between the holder and the owner under which the holder may impose the charge and the holder regularly imposes the charge, which is not regularly reversed or otherwise canceled. The amount of the deduction is limited to an amount that is not unconscionable.

§36-8-6. Burden of proof as to property evidenced by record of check or draft.

A record of the issuance of a check, draft or similar instrument is prima facie evidence of an obligation. In claiming property from a holder who is also the issuer, the administrator's burden of proof as to the existence and amount of the property and its abandonment is satisfied by showing issuance of the instrument and passage of the requisite period of abandonment. Defenses of payment, satisfaction, discharge and want of consideration are affirmative defenses that must be established by the holder.

§36-8-7. Report of abandoned property.

(a) A holder of property presumed abandoned shall make a report to the administrator concerning the property.

(b) The report must be verified and must contain:

(1) A description of the property;

(2) Except with respect to a traveler's check or money order, the name, if known, and last known address, if any, and the social security number or taxpayer identification number, if readily ascertainable, of the apparent owner of property of the value of fifty dollars or more;

(3) An aggregated amount of items valued under fifty dollars each;

(4) In the case of an amount of fifty dollars or more held or owing under an annuity or a life or endowment insurance policy, the full name and last known address of the annuitant or insured and of the beneficiary;

(5) In the case of property held in a safe deposit box or other safekeeping depository, an indication of the place where it is held and where it may be inspected by the administrator, and any amounts owing to the holder;

(6) The date, if any, on which the property became payable, demandable or returnable, and the date of the last transaction with the apparent owner with respect to the property; and

(7) Other information that the administrator by rule prescribes as necessary for the administration of this article.

(c) If a holder of property presumed abandoned is a successor to another person who previously held the property for the apparent owner or the holder has changed its name while holding the property, the holder shall file with the report its former names, if any, and the known names and addresses of all previous holders of the property.

(d) The report must be filed before the first day of November of each year and cover the twelve months next preceding the first day of July of that year, but a report with respect to a life insurance company must be filed before the first day of May of each year for the calendar year next preceding.

(e) The holder of property presumed abandoned shall send written notice to the apparent owner, not more than one hundred twenty days or less than sixty days before filing the report, stating that the holder is in possession of property subject to this article, if:

(1) The holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate;

(2) The claim of the apparent owner is not barred by a statute of limitations; and

(3) The value of the property is fifty dollars or more.

(f) Before the date for filing the report, the holder of property presumed abandoned may request the administrator to extend the time for filing the report. The administrator may grant the extension for good cause. The holder, upon receipt of the extension, may make an interim payment on the amount the holder estimates will ultimately be due, which terminates the accrual of additional interest on the amount paid.

(g) The holder of property presumed abandoned shall file with the report an affidavit stating that the holder has complied with subsection (e) of this section.

§36-8-8. Payment or delivery of abandoned property.

(a) Except for property held in a safe deposit box or other safekeeping depository, upon filing the report required by section seven of this article, the holder of property presumed abandoned shall pay, deliver or cause to be paid or delivered to the administrator the property described in the report as unclaimed, but if the property is an automatically renewable deposit, and a penalty or forfeiture in the payment of interest would result, the time for compliance is extended until a penalty or forfeiture would no longer result. Property held in a safe deposit box or other safekeeping depository may not be delivered to the administrator until one hundred twenty days after filing the report required by section seven of this article.

(b) If the property reported to the administrator is a security or security entitlement under article eight of the uniform commercial code, the administrator is an appropriate person to make an endorsement, instruction or entitlement order on behalf of the apparent owner to invoke the duty of the issuer or its transfer agent or the securities intermediary to transfer or dispose of the security or the security entitlement in accordance with article eight of the uniform commercial code.

(c) If the holder of property reported to the administrator is the issuer of a certificated security, the administrator has the right to obtain a replacement certificate pursuant to article eight, section four hundred eight of the uniform commercial code, but an indemnity bond is not required.

(d) An issuer, the holder, and any transfer agent or other person acting pursuant to the instructions of and on behalf of the issuer or holder in accordance with this section is not liable to the apparent owner and must be indemnified against claims of any person in accordance with section ten of this article.

§36-8-9. Notice and publication of lists of abandoned property.

(a) The administrator shall publish a notice not later than the thirtieth day of November of the year next following the year in which abandoned property has been paid or delivered to the administrator. The notice must be published in a newspaper of general circulation in the county of this state in which is located the last known address of any person named in the notice. If a holder does not report an address for the apparent owner, or the address is outside this state, the notice must be published in the county in which the holder has its principal place of business within this state or another county that the administrator reasonably selects. The advertisement must be in a form that, in the judgment of the administrator, is likely to attract the attention of the apparent owner of the unclaimed property. The form must contain:

(1) The name of each person appearing to be the owner of the property, as set forth in the report filed by the holder;

(2) The last known address or location of each person appearing to be the owner of the property, if an address or location is set forth in the report filed by the holder;

(3) A statement explaining that property of the owner is presumed to be abandoned and has been taken into the protective custody of the administrator; and

(4) A statement that information about the property and its return to the owner is available to a person having a legal or beneficial interest in the property, upon request to the administrator.

(b) The administrator is not required to advertise the name and address or location of an owner of property having a total value less than fifty dollars or information concerning a traveler's check, money order or similar instrument.

§36-8-10. Custody by state; recovery by holder; defense of holder.

(a) In this section, payment or delivery is made in "good faith" if-

(1) Payment or delivery was made in a reasonable attempt to comply with this article;

(2) The holder was not then in breach of a fiduciary obligation with respect to the property and had a reasonable basis for believing, based on the facts then known, that the property was presumed abandoned: *Provided*, That no fiduciary shall be deemed to be in breach of a fiduciary obligation for purposes of this section by virtue of paying or delivering property to the administrator prior to the expiration of the period for holding unclaimed or abandoned property contained in the instrument under which such fiduciary is acting; and

(3) There is no showing that the records under which the payment or delivery was made did not meet reasonable commercial standards of practice.

(b) Upon payment or delivery of property to the administrator, the state assumes custody and responsibility for the safekeeping of the property. A holder who pays or delivers property to the administrator in good faith is relieved of all liability arising thereafter with respect to the property.

(c) A holder who has paid money to the administrator pursuant to this article may subsequently make payment to a person reasonably appearing to the holder to be entitled to payment. Upon a filing by the holder of proof of payment and proof that the payee was entitled to the payment, the administrator shall promptly reimburse the holder for the payment without imposing a fee or other charge. If reimbursement is sought for a payment made on a negotiable instrument, including a traveler's check or money order, the holder must be reimbursed upon filing proof that the instrument was duly presented and that payment was made to a person who reasonably appeared to be entitled to payment. The holder must be reimbursed for payment made even if the payment was made to a person whose claim was barred under subsection (a), section nineteen of this article.

(d) A holder who has delivered property other than money to the administrator pursuant to this article may reclaim the property if it is still in the possession of the administrator, without paying any fee or other charge, upon filing proof that the apparent owner has claimed the property from the holder.

(e) The administrator may accept a holder's affidavit as sufficient proof of the holder's right to recover money and property under this section.

(f) If a holder pays or delivers property to the administrator in good faith and thereafter another person claims the property from the holder or another state claims the money or property under its laws relating to escheat or abandoned or unclaimed property, the administrator, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim resulting from payment or delivery of the property to the administrator.

(g) Property removed from a safe deposit box or other safekeeping depository is received by the administrator subject to the holder's right to be reimbursed for the cost of the opening and to any valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage charges. The administrator shall reimburse the holder out of the proceeds remaining after deducting the expense incurred by the administrator in selling the property.

§36-8-11. Crediting of dividends, interest and increments to owner's account.

(a) If property other than money is delivered to the administrator under this article, the owner is entitled to receive from the administrator any income or gain realized or accruing on the property at or before liquidation or conversion of the property into money only as provided in this subsection:

(1) If the property was an interest bearing demand, savings or time deposit, including a deposit that is automatically renewable, the administrator shall pay interest at a rate of four percent per year or any lesser rate the property earned at the time the property was delivered to the administrator.

(2) If the property is any property other than an interest bearing demand, savings or time deposit, the administrator shall pay the owner four percent per year on the market value of the property at the time it was delivered to the administrator or any lesser annualized rate of income or gain the property earned from the time the property was delivered to the administrator to the time the owner established a claim to the property.

(3) In no event shall the administrator be required to pay the owner any income or gain realized or accruing on the property after the third anniversary of the delivery of the property to the administrator.

(b) Nothing in this section shall be construed to entitle an owner to interest on property which did not realize or accrue income or gain at the time it was delivered to the administrator.

§36-8-12. Public sale of abandoned property.

(a) Except as otherwise provided in this section, the administrator, within three years after the receipt of abandoned property, shall sell it to the highest bidder at public sale at a location in the state which in the judgment of the administrator affords the most favorable market for the property. The administrator may decline the highest bid and re-offer the property for sale if the administrator considers the bid to be insufficient.

The administrator need not offer the property for sale if the administrator considers that the probable cost of sale will exceed the proceeds of the sale. A sale held under this section must be preceded by a single publication of notice, at least three weeks before sale, in a newspaper of general circulation in the county in which the property is to be sold.

(b) Securities listed on an established stock exchange must be sold at prices prevailing on the exchange at the time of sale. Other securities may be sold over the counter at prices prevailing at the time of sale or by any reasonable method selected by the administrator. If securities are sold by the administrator before the expiration of three years after their delivery to the administrator, a person making a claim under this article before the end of the three-year period is entitled to the proceeds of the sale of the securities less any deduction for expenses of sale. A person making a claim under this article after the expiration of the three-year period is entitled to receive the securities delivered to the administrator by the holder, if they still remain in the custody of the administrator, or the net proceeds received from sale, and is not entitled to receive any appreciation in the value of the property occurring after delivery to the administrator, except in a case of intentional misconduct or malfeasance by the administrator.

(c) A purchaser of property at a sale conducted by the administrator pursuant to this article takes the property free of all claims of the owner or previous holder and of all persons claiming through or under them. The administrator shall execute all documents necessary to complete the transfer of ownership.

§36-8-13. Deposit of funds.

(a) Except as otherwise provided by this section, the administrator shall promptly deposit in the general revenue fund of this state all funds received under this article, including the proceeds from the sale of abandoned property under section twelve of this article. The administrator shall retain in a separate trust fund at least one hundred thousand dollars from which the administrator shall pay claims duly allowed. The administrator shall record the name and last known address of each person appearing from the holders' reports to be entitled to the property and the name and last known address of each insured person or annuitant and beneficiary and with respect to each policy or annuity listed in the report of an insurance company, its number, the name of the company and the amount due.

(b) Before making a deposit to the credit of the general revenue fund, the administrator may deduct:

(1) Expenses of sale of abandoned property;

(2) Costs of mailing and publication in connection with abandoned property;

(3) Reasonable service charges; and

(4) Expenses incurred in examining records of holders of property and in collecting the property from those holders.

§36-8-14. Claim of another state to recover property.

(a) After property has been paid or delivered to the administrator under this article, another state may recover the property if:

(1) The property was paid or delivered to the custody of this state because the records of the holder did not reflect a last known location of the apparent owner within the borders of the other state and the other state establishes that the apparent owner or other person entitled to the property was last known to be located within the borders of that state and under the laws of that state the property has escheated or become subject to a claim of abandonment by that state;

(2) The property was paid or delivered to the custody of this state because the laws of the other state did not provide for the escheat or custodial taking of the property, and under the laws of that state subsequently enacted the property has escheated or become subject to a claim of abandonment by that state;

(3) The records of the holder were erroneous in that they did not accurately identify the owner of the property and the last known location of the owner within the borders of another state and under the laws of that state the property has escheated or become subject to a claim of abandonment by that state;

(4) The property was subjected to custody by this state under subdivision (6), section four of this article and under the laws of the state of domicile of the holder the property has escheated or become subject to a claim of abandonment by that state; or

(5) The property is a sum payable on a traveler's check, money order or similar instrument that was purchased in the other state and delivered into the custody of this state under subdivision (7), section four of this article, and under the laws of the other state the property has escheated or become subject to a claim of abandonment by that state.

(b) A claim of another state to recover escheated or abandoned property must be presented in a form prescribed by the administrator, who shall decide the claim within ninety days after it is presented. The administrator shall allow the claim upon determining that the other state is entitled to the abandoned property under subsection (a) of this section.

(c) The administrator shall require another state, before recovering property under this section, to agree to indemnify this state and its officers and employees against any liability on a claim to the property.

§36-8-15. Filing claim with administrator; handling of claims by administrator.

(a) A person, excluding another state, claiming property paid or delivered to the administrator may file a claim on a form prescribed by the administrator and verified by the claimant.

(b) Within ninety days after a claim is filed, the administrator shall allow or deny the claim and give written notice of the decision to the claimant. If the claim is denied, the administrator shall inform the claimant of the reasons for the denial and specify what additional evidence is required before the claim will be allowed. The claimant may then file a new claim with the administrator or maintain an action under section sixteen of this article.

(c) Within thirty days after a claim is allowed, the property or the net proceeds of a sale of the property must be delivered or paid by the administrator to the claimant.

§36-8-16. Action to establish claim.

A person aggrieved by a decision of the administrator or whose claim has not been acted upon within ninety days after its filing may maintain an original action to establish the claim in the circuit court of Kanawha County, naming the administrator as a defendant. If the aggrieved person establishes the claim in an action against the administrator, the court may award the claimant reasonable attorney's fees.

§36-8-17. Election to take payment or delivery.

(a) The administrator may decline to receive property reported under this article which the administrator considers to have a value less than the expenses of notice and sale.

(b) A holder, with the written consent of the administrator and upon conditions and terms prescribed by the administrator, may report and deliver property before the property is presumed abandoned. Property so delivered must be held by the administrator and is not presumed abandoned until it otherwise would be presumed abandoned under this article.

§36-8-18. Destruction or disposition of property having no substantial commercial value; immunity from liability.

If the administrator determines after investigation that property delivered under this article has no substantial commercial value, the administrator may destroy or otherwise dispose of the property at any time. An action or proceeding may not be maintained against the state or any officer or against the holder for or on account of an act of the administrator under this section, except for intentional misconduct or malfeasance.

§36-8-19. Periods of limitation.

(a) The expiration, before or after the effective date of this article, of a period of limitation on the owner's right to receive or recover property, whether specified by contract, statute or court order, does not preclude the property from being presumed abandoned or affect a duty to file a report or to pay or deliver or transfer property to the administrator as required by this article.

(b) An action or proceeding may not be maintained by the administrator to enforce this article in regard to the reporting, delivery or payment of property more than ten years after the holder specifically identified the property in a report filed with the administrator or gave express notice to the administrator of a dispute regarding the property. In the absence of such a report or other express notice, the period of limitation is tolled. The period of limitation is also tolled by the filing of a report that is fraudulent.

§36-8-20. Requests for reports and examination of records.

(a) The administrator, or the administrator's designated agent, may require a person who has not filed a report, or a person who the administrator believes has filed an inaccurate, incomplete or false report, to file

a verified report in a form specified by the administrator. The report must state whether the person is holding property reportable under this article, describe property not previously reported or as to which the administrator has made inquiry and specifically identify and state the amounts of property that may be in issue.

(b) The administrator, or the administrator's designated agent, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with this article. The administrator may conduct the examination even if the person believes it is not in possession of any property that must be reported, paid or delivered under this article. The administrator may contract with any other person to conduct the examination on behalf of the administrator. However, this subsection shall not be construed to grant the administrator the right to examine the records of a national banking association to an extent greater than permitted by applicable federal law, nor shall this subsection permit the records of any bank chartered or incorporated under the laws of any state to be subject to examination to an extent greater than the examination permitted of the records of a national banking association under applicable federal law.

(c) The administrator, or the administrator's agent, at reasonable times may examine the records of an agent, including a dividend disbursing agent or transfer agent, of a business association or financial association that is the holder of property presumed abandoned if the administrator, or the administrator's agent, has given the notice required by subsection (b) of this section to both the association or organization and the agent at least ninety days before the examination.

(d) Documents and working papers obtained or compiled by the administrator, or the administrator's agents, employees or designated representatives, in the course of conducting an examination are confidential and are not public records, but the documents and papers may be:

(1) Used by the administrator or the administrator's attorney in the course of an action to collect unclaimed property or otherwise enforce this article;

(2) Used in joint examinations conducted with or pursuant to an agreement with another state, the federal government or any other governmental subdivision, agency or instrumentality;

(3) Produced pursuant to subpoena or court order; or

(4) Disclosed to the abandoned property office of another state for that state's use in circumstances equivalent to those described in this subdivision, if the other state is bound to keep the documents and papers confidential.

(e) If an examination of the records of a person results in the disclosure of property reportable under this article, the administrator may assess the cost of the examination against the holder at the rate of two hundred dollars a day for each examiner, or a greater amount that is reasonable and was incurred, but the assessment may not exceed the value of the property found to be reportable. The cost of an examination made pursuant to subsection (c) of this section may be assessed only against the business association or financial organization.

(f) If, after the effective date of this article, a holder does not maintain the records required by section twenty-one of this article and the records of the holder available for the periods subject to this article are

insufficient to permit the preparation of a report, the administrator may require the holder to report and pay to the administrator the amount the administrator reasonably estimates, on the basis of any available records of the holder or by any other reasonable method of estimation, should have been but was not reported.

§36-8-21. Retention of records.

(a) Except as otherwise provided in subsection (b) of this section, a holder required to file a report under section seven of this article shall maintain the records containing the information required to be included in the report for ten years after the holder files the report, unless a shorter period is provided by rule of the administrator.

(b) A business association or financial organization that sells, issues or provides to others for sale or issue in this state, traveler's checks, money orders or similar instruments other than third-party bank checks, on which the business association or financial organization is directly liable, shall maintain a record of the instruments while they remain outstanding, indicating the state and date of issue, for three years after the holder files the report.

§36-8-22. Enforcement.

The administrator may maintain an action in this or another state to enforce this article. The court may award reasonable attorney's fees to the prevailing party.

§36-8-23. Interstate agreements and cooperation; joint and reciprocal actions with other states.

(a) The administrator may enter into an agreement with another state to exchange information relating to abandoned property or its possible existence. The agreement may permit the other state, or another person acting on behalf of a state, to examine records as authorized in section twenty of this article. The administrator by rule may require the reporting of information needed to enable compliance with an agreement made under this section and prescribe the form.

(b) The administrator may join with another state to seek enforcement of this article against any person who is or may be holding property reportable under this article.

(c) At the request of another state, the administrator's attorney may maintain an action on behalf of the other state to enforce, in this state, the unclaimed property laws of the other state against a holder of property subject to escheat or a claim of abandonment by the other state, if the other state has agreed to pay expenses incurred by the attorney general in maintaining the action.

(d) The administrator may request that the attorney general of another state or another attorney commence an action in the other state on behalf of the administrator. The administrator may retain any other attorney to commence an action in this state on behalf of the administrator. This state shall pay all expenses, including attorney's fees, in maintaining an action under this subsection. With the administrator's approval, the expenses and attorney's fees may be paid from money received under this article. The administrator may agree to pay expenses and attorney's fees based, in whole or in part, on a percentage of the value of any property recovered in the action. Any expenses or attorney's fees paid under this subsection may not be deducted from the amount that is subject to the claim by the owner under this article.

§36-8-24. Interest and penalties.

(a) A holder who fails to report, pay or deliver property within the time prescribed by this article shall pay to the administrator interest at the annual rate of twelve percent on the property or value thereof from the date the property should have been reported, paid or delivered.

(b) Except as otherwise provided in subsection (c) of this section, a holder who fails to report, pay or deliver property within the time prescribed by this article, or fails to perform other duties imposed by this article, shall pay to the administrator, in addition to interest as provided in subsection (a) of this section, a civil penalty of two hundred dollars for each day the report, payment or delivery is withheld, or the duty is not performed, up to a maximum of five thousand dollars.

(c) A holder who willfully fails to report, pay or deliver property within the time prescribed by this article, or willfully fails to perform other duties imposed by this article, shall pay to the administrator, in addition to interest as provided in subsection (a) of this section, a civil penalty of one thousand dollars for each day the report, payment or delivery is withheld, or the duty is not performed, up to a maximum of twenty-five thousand dollars, plus twenty-five percent of the value of any property that should have been but was not reported.

(d) A holder who makes a fraudulent report shall pay to the administrator, in addition to interest as provided in subsection (a) of this section, a civil penalty of one thousand dollars for each day from the date a report under this article was due, up to a maximum of twenty-five thousand dollars, plus twenty-five percent of the value of any property that should have been but was not reported.

(e) The administrator for good cause may waive, in whole or in part, interest under subsection (a) of this section and penalties under subsections (b) and (c) of this section, and shall waive penalties if the holder acted in good faith and without negligence.

§36-8-25. Records of abandoned property.

Records of abandoned property kept by the administrator are available for inspection and copying only by an owner of such property as to the particular property he or she owns, or by his or her personal representative, next of kin, attorney at law or such person entitled to inherit from the owner conducting a legal audit thereof. These records are exempt from the provisions of chapter twenty-nine-b of this code.

§36-8-26. Foreign transactions.

This article does not apply to property held, due and owing in a foreign country and arising out of a foreign transaction.

§36-8-27. Transitional provisions.

(a) An initial report filed under this article for property that was not required to be reported before the effective date of this article but which is subject to this article must include all items of property that would have been presumed abandoned during the ten-year period next preceding the effective date of this article as if this article had been in effect during that period.

(b) This article does not relieve a holder of a duty that arose before the effective date of this article to report, pay or deliver property. Except as otherwise provided in subsection (b), section nineteen of this article, a holder who did not comply with the law in effect before the effective date of this article is subject to the applicable provisions for enforcement and penalties which then existed, which are continued in effect for the purpose of this section.

§36-8-28. Rules.

On or before the first day of July, one thousand nine hundred ninety-seven, the administrator shall promulgate emergency legislative rules in accordance with the provisions of section fifteen, article three, chapter twenty-nine-a of this code. The administrator shall propose legislative rules for promulgation in accordance with the requirements of the secretary of state and the provisions of chapter twenty-nine-a of this code to otherwise effectuate the purposes of this article.

§36-8-29. Uniformity of application and construction.

This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting it.

§36-8-30. Short title.

This article may be cited as the “Uniform Unclaimed Property Act”.

§36-8-31. Severability clause.

If any provision of this article or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

§36-8-32. Effective date.

This article shall take effect on the first day of July, one thousand nine hundred ninety-seven.

ARTICLE 8A. UNCLAIMED STOLEN PROPERTY HELD BY LAW-ENFORCEMENT AGENCIES.

§36-8A-1. Definitions.

For purposes of this article, unless a different meaning clearly appears in the context:

(a) “Chief executive” means the superintendent of the state police; the chief conservation officer of the division of natural resources; the sheriff of any West Virginia county; or the chief of any West Virginia municipal law enforcement agency.

(b) “Item” means any item of unclaimed stolen property or any group of similar items considered together for purposes of reporting, donation, sale or destruction under this article.

(c) “Law-enforcement agency” means any duly authorized state, county or municipal organization of the state of West Virginia employing one or more persons whose responsibility is the enforcement of laws of the state or any county or municipality thereof: *Provided*, That neither the Hatfield-McCoy regional recreation authority nor any state institution of higher education may be deemed a law-enforcement agency.

(d) “Nonprofit organization” means: (i) Any nonprofit charitable organization; or (ii) any agency of the state of West Virginia the purpose of which is to provide health, recreational or educational services to citizens of the state of West Virginia.

(e) “Stolen property” means any tangible personal property, including cash and coins, which is confiscated by or otherwise comes into the custody of a law-enforcement agency during the course of a criminal investigation or the performance of any other authorized law-enforcement activity, whether or not the property was or can be proven to have been stolen.

(f) “Treasurer” means the state treasurer or his or her authorized designee for purposes of the administration of this article.

(g) “Unclaimed stolen property” is stolen property:

(1) Which has been held by a law-enforcement agency for at least six months, during which time the rightful owner has not claimed it;

(2) For which the chief executive determines that there is no reasonable likelihood of its being returned to its rightful owner; and

(3) Which the chief executive determines to have no evidentiary value.

§36-8A-2. Unclaimed stolen property reports.

(a) Prior to the first day of September, one thousand nine hundred ninety-seven, and on or before the first day of September of each succeeding year, each law-enforcement agency which has unclaimed stolen property in its possession shall file an unclaimed stolen property report with the treasurer which identifies all unclaimed stolen property in its possession at the time the report is filed.

(b) An unclaimed stolen property report shall include the following information with respect to all unclaimed stolen property in the possession of the law-enforcement agency filing it:

(1) A description of each item;

(2) An estimated value for each item;

(3) Whether any nonprofit organization has requested that any item be donated to it and whether any nonprofit organization might be considered to receive the item as a donation;

(4) Whether the law-enforcement agency could use the item for any legitimate and authorized law enforcement or educational purpose;

(5) The chief executive's recommendation for the disposition of each item; and

(6) If any unclaimed stolen property in the law enforcement agency's possession consists of firearms or ammunition, the chief executive's determination of whether the firearms or ammunition are of a sufficient quality to be traded in on new weapons or ammunition for the law enforcement agency or appropriated for the law enforcement agency's use.

§36-8A-3. Treasurer's response to unclaimed stolen property report.

Within thirty days of the receipt of an unclaimed stolen property report, the treasurer shall send a response to the law-enforcement agency submitting it. For each item identified in the unclaimed stolen property report except firearms and ammunition which the chief executive determined to be of sufficient quality to trade in on new weapons or ammunition or to appropriate for the law-enforcement agency's use, the treasurer shall either require that it be delivered to the treasurer, authorize the law-enforcement agency to sell it at a public sale, authorize the law-enforcement agency to donate it to a nonprofit organization, authorize the law enforcement agency to use it for any legitimate and authorized law-enforcement or educational purpose, or authorize the law-enforcement agency either to sell it at a public sale, to donate it to a nonprofit organization, **or to use it for any legitimate** and authorized law-enforcement or educational purpose. However, the treasurer may not authorize the law-enforcement agency to sell or donate any firearms or ammunition. If the treasurer determines that any item identified in an unclaimed stolen property report is of such value that it should be processed by the treasurer's office, the treasurer shall have the authority to require that the item be delivered to the treasurer.

§36-8A-4. Disposition of unclaimed stolen property other than firearms and ammunition.

(a) Within ninety days of receipt of the treasurer's response required by section three of this article, the law enforcement agency shall dispose of all items identified in the treasurer's response in the manner set forth in this section.

(b) If the treasurer's report requires the law-enforcement agency to deliver any item to the treasurer, the chief executive shall cause the item to be so delivered. Within three years after receiving the item from the law-enforcement agency, the treasurer shall sell it to the highest bidder at public sale at a location in the state which in the judgment of the treasurer affords the most favorable market for the property. The treasurer may decline the highest bid and re-offer the property for sale if the treasurer considers the bid to be insufficient. The treasurer need not offer the property for sale if the treasurer considers that the probable cost of sale will exceed the proceeds of the sale. A sale held under this subsection must be preceded by a single publication of notice, at least three weeks before sale, in a newspaper of general circulation in the county in which the property is to be sold.

(c) If the treasurer's response authorizes the law-enforcement agency to sell any item at a public sale, the chief executive shall retain an auctioneer licensed by the state of West Virginia to conduct the sale. The costs or fees incurred will be paid from a fund generated from revenues gained by the sale of such property. The licensed auctioneer shall sell the item to the highest bidder at a location which in the judgment of the

chief executive affords the most favorable market for the items. A sale under this subsection must be preceded by a single publication of notice, at least three weeks before the sale, in a newspaper of general circulation in the county in which the property is to be sold. The chief executive shall retain the proceeds of any public sale under this subsection for the use of the law enforcement agency.

(d) If the treasurer's response authorizes the law-enforcement agency to donate any item to a nonprofit organization, the chief executive shall cause the item to be so donated.

(e) If the treasurer's report authorizes the law enforcement agency to use any item for any legitimate and authorized law enforcement or educational purpose, the chief executive shall cause the item to be used for that purpose. However, if the law enforcement agency ever discontinues its use of the item, it must again report the item to the treasurer as provided in section two of this article.

(f) If the treasurer's response authorizes the law-enforcement agency either to sell any item at a public sale, to donate it to a nonprofit organization or to use it for any legitimate and authorized law-enforcement or educational purpose, the chief executive may cause the item either to be sold, donated or used as provided in this section. However, the chief executive shall first attempt to donate the item as provided in subsection (d) of this section or to use it as provided in subsection (e) of this section before selling it at a public sale as provided in subsection (c) of this section.

§36-8A-5. Trade-in or appropriation of unclaimed stolen firearms and ammunition.

(a) If the chief executive determined in the law-enforcement agency's unclaimed stolen property report that any firearms or ammunition in the law-enforcement agency's possession are not of a sufficient quality to be traded in on new weapons or ammunition for the agency or appropriated for the agency's use, the chief executive shall cause the firearms or ammunition to be delivered to the treasurer for destruction.

(b) If the chief executive determined in the law-enforcement agency's unclaimed stolen property report that any firearms or ammunition in the law-enforcement agency's possession are of a sufficient quality to be traded in on new weapons or ammunition for the agency or appropriated for the agency's use, the chief executive shall cause the firearms or ammunition to be traded in on new weapons or ammunition or appropriated for the agency's use. After any trade-in or appropriation under this subsection, the law enforcement agency shall file a report with the treasurer and the state tax department on the trade-in or appropriation.

§36-8A-6. Deposit of funds.

(a) The treasurer shall promptly deposit in the general revenue fund of this state all proceeds of any public sale of unclaimed stolen property conducted by the treasurer under subsection (b), section four of this article.

(b) Before making a deposit to the credit of the general revenue fund, the treasurer may deduct the expenses of the related public sale conducted by the treasurer.

(c) The treasurer may deduct the accumulated expenses incurred in the destruction of unclaimed stolen firearms and ammunition under this article from any deposit made under subsection (a) of this section.

§36-8A-7. Immunity of law-enforcement agencies.

If a law enforcement agency delivers, sells or donates any item of unclaimed stolen property in good faith and in accordance with the provisions of this article, the law enforcement agency and its chief executive, officers and employees involved in the delivery, sale or donation shall be immune from any subsequent claim of a person who purports to be the true owner of the item and who did not claim the item prior to the delivery, sale or donation.

CHAPTER 42. DESCENT AND DISTRIBUTION.

ARTICLE 1. DESCENT.

§42-1-3c. No taker.

If there is no taker under the provisions of this article, the intestate estate passes to the state. Any real property shall pass to the state auditor. Any personal property shall pass to the state treasurer for disposition by public sale in accordance with the provisions of section twelve, article eight, chapter thirty-six of this code. The proceeds of the sale of any such real property shall be deposited to the credit of the general school fund. The proceeds of the sale of any such personal property shall be deposited to the credit of the general revenue fund.

[Passed April 12, 1997; effective July 1, 1997]